The respondent commenced proceedings in the District Court against the appellants for possession of the premises on the ground that the appellants were in unlawful possession. The District Judge gave judgment against the appellants who now appeal.

The only ground of appeal relied on by the appellants at the hearing of the appeal is that the notice to quit had not effectively determined the tenancy of Ng Huat Lye which on his death intestate had become vested in the Chief Justice by virtue of section 37 of the Probate and Administration Act (Cap. 23). This contention was raised before the Court of Appeal in *Lai Seng Fook* v. *Tang Kong Low*[1] where the court decided that where the person in occupation continues to pay the rent to the landlord after the death intestate of the tenant he can only lawfully do so as agent of the Chief Justice in whom the estate of the deceased tenant was vested by operation of law and that a notice to quit served on an agent is a notice to the principal.

I am bound by this decision and the appeal must therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *G. Murugaiyan; Kirpal Singh & Co.*

TAN BOON CHEE, DAVID v. MEDICAL COUNCIL OF SINGAPORE

[O.C.J. (Choor Singh J.) May 15, 1980]

[Singapore — Originating Motion No. 50 of 1978]

Medical Profession — Inquiry — Charges of infamous conduct — Not all members of Medical Council who were present at the start of inquiry were present throughout the hearing — Medical Registration Act (Cap. 218), ss. 23 & 24.

Administrative Law — Inquiry by Medical Council — Improper exercise of statutory jurisdiction — Charge of infamous conduct — Breach of natural justice — Medical Registration Act (Cap. 218), ss. 23 & 24.

This was an appeal against a finding of the Medical Council of Singapore that the appellant, a registered medical practitioner, was guilty of infamous conduct in a professional respect. The appellant was given notice of six charges of infamous conduct in that he was alleged to have prescribed and supplied the drug "Rohypnol" to named patients in such "irregular and excessive quantities" that it constituted infamous conduct in a professional respect. The appellant appeared before the Medical Council at a hearing of the charges held pursuant to the provisions of section 23 of the Act. He was represented by counsel, and witnesses were called by both sides. The inquiry was held over two days and at the conclusion the Medical Council made an Order that the appellant be suspended from Medical Practice for nine months. The record of the enquiry showed that not all members of the Medical Council who were present at the start of the inquiry were present throughout the hearing. Some who were present on the first day were absent on the second day. Some who were present on the second day did not attend the hearing on the first day of the inquiry. Furthermore, on both days, members of the Council were walking in and out of the inquiry as and when they liked while evidence of witnesses was being recorded.

Held, allowing the appeal: (1) the appellant did not get a fair and proper hearing in this case. The manner in which the inquiry was conducted resulted in substantial prejudice to the appellant. It was a clear breach of natural justice for a member of the Medical Council to participate in a decision of the Council when he had not heard all the oral evidence and the submissions made. This breach was so fundamental that it could not be waived;

(2) there was clearly no "due inquiry" in this case within the meaning of section 23(1) of the Medical Registration Act.

Cases referred to:-

(1) *R.* v. *Sussex Justices, ex parte McCarthy* [1924] 1 K.B. 256.

(2) *Wakefield Local Board of Health* (1865-66) 1 Q.B. 84.

(3) *Chop Wong Soong Co.* v. *Khoo Hean Kee* [1964] M.L.J. 410.

(4) *Munday* v. *Munday* [1954] 2 All E.R. 667.

(5) *Fulker* v. *Fulker* [1936] 3 All E.R. 636.

(6) *Mayes* v. *Mayes* [1971] 1 W.L.R. 679 @ 684.

ORIGINATING MOTION.

Singa Retnam (*Seah Sheng Yong* with him) for the appellant.

Sachi Saurajen for the Medical Council.

Cur. Adv. Vult.

Choor Singh J.: This appeal involves a question of importance as to the proper exercise of the statutory jurisdiction conferred on the Medical Council of Singapore to remove from the medical register a practitioner who is alleged to have been guilty of infamous conduct in a professional respect. Parliament has conferred on the Medical Council responsibility for the register and has constituted the Council a domestic forum to determine whether a case is made out for striking off the list a particular name.

It is convenient at this point to set out the terms of section 23(1) of the Medical Registration Act on which the whole question turns. It runs as follows:

"23 (1) If any person registered, whether provisionally or otherwise, under this Act is convicted of any heinous offence or, after due inquiry by the Medical Council, is deemed by the Council to have been guilty of infamous conduct in any professional respect, the Medical Council may order the name of that person to be removed from the register."

The appellant who is a registered medical practitioner was given notice of six charges of infamous conduct in a professional respect. In all six charges it was alleged that the appellant had prescribed and supplied the drug "Rohypnol" to named patients in such "irregular and excessive quantities" that it constituted infamous conduct in a professional respect. The appellant appeared before the Medical Council at a hearing of the charges held pursuant to the provisions of section 23 of the Act. The appellant was represented by counsel. Witnesses were called by both sides. The Inquiry was held over two days. At the conclusion of the Inquiry, the Medical Council made an Order that the appellant be suspended from medical practice for nine months. The appellant now appeals to this court against the said Order.

A large number of grounds are relied upon for asking this court to set aside the Order made by the Medical Council suspending the appellant from medical practice. I consider it unnecessary to consider them or to deal with the merits of this case because on reading the record of this case I noticed something which has shocked my sense of justice and is so glaring a breach of natural justice that the Order made by the Medical Council cannot be allowed to stand. I express no opinion on the guilt or innocence of the appellant on the charges that were brought against

him by the Medical Council. That is an entirely different matter which for reasons that follow it is unnecessary to decide.

The record shows that not all members of the Medical Council who were present at the start of the Inquiry were present throughout the hearing. Some who were present on the first day were absent on the second day. Some who were present on the second day did not attend the hearing on the first day of the Inquiry. Furthermore, on both days, members of Council were walking in and out of the Inquiry as and when they liked while evidence of witnesses was being recorded. I am amazed to find that although three experienced counsel were present at the hearing, none of them thought fit to raise any objection to this extraordinary conduct of some of the members of the Medical Council. The Legal Assessor should have advised the Chairman of the Inquiry that if any member wished to leave the room, the proceedings must be adjourned and resumed only when that member is again present.

It is quite clear that some members of the Medical Council who took part in the Council's determination did not hear the full evidence and all the submissions made. A person who has not seen and heard a witness is as a rule quite incapable of estimating the value of his evidence. It was therefore most improper for members of the Council to walk in and out of the Inquiry while evidence was being recorded or to be absent altogether. Such conduct is not only improper and unfair to the practitioner whose conduct is the subject matter of the Inquiry but it also tends to destroy confidence in the fairness of the Council's decisions. Justice must be rooted in confidence and confidence is destroyed when right-minded people get the impression that the Medical Council did not give the practitioner a proper hearing. As was observed by Lord Hewart C.J. in *R.* v. *Sussex Justices, ex parte McCarthy*[1]:

"It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done...."

The statutory right to a hearing granted to a medical practitioner by section 23 of the Medical Registration Act is a right to a fair and proper hearing conducted in accordance with the principles of natural justice. The Council has to decide whether infamous conduct has been made out to its satisfaction. It has not merely to ascertain the facts, but also to decide what standard to apply and whether to hold that the particular conduct is infamous, not in the abstract but "in any professional respect". Tremendous powers, which may close a man's professional career and ruin him financially and socially have been vested in the Medical Council by Parliament from a faith both in the members' expertise in regard to that grave issue and in their moral integrity and trustworthiness. Such grave responsibility should not be exercised in a light-hearted or slipshod manner.

Counsel for the respondents concedes that there was a breach of the rules of natural justice but he submits that there was a waiver of the breach because the appellant was in a position to object and failed to do so. The appellant was represented by counsel and it is submitted that the appellant's counsel was fully conscious of the breach and should have raised an objection. It is contended that by allowing the proceedings to go on in the circumstances which are now objected to, the appellant disentitled himself to raise any objection because of his waiver and approbation. Reliance is placed on the decision in *Wakefield Local Board of Health*[2] and *Chop Wong Soong Co.* v. *Khoo Hean Kee.*[3]

The cases relied upon by counsel for the respondents are in my opinion of no help to the respondents. This is an appeal under section 24 of the Medical Registration Act by a medical practitioner aggrieved by the decision of the Medical Council. It is open to the appellant on appeal to raise any valid objection to the proceedings before the Medical Council as the appeal is by way of a re-hearing of the whole case. In the *Chop Wong Soong Co.'s* case, it was *certiorari* which was asked for — a discretionary remedy in the particular circumstances of the case. The decision in *Wakefield's* case is old law which cannot stand scrutiny in the long line of modern cases. It is clearly contrary to the decision in *R.* v. *Sussex Justices, supra,* where the question of waiver was raised but clearly rejected by Lord Hewart. See also *Munday* v. *Munday*[4] and *Fulker* v. *Fulker.*[5]

In this case the Medical Council placed itself in an impossible position by continuing to hear the case and record evidence when some members of the Council were absent and again later by allowing those absent members to return and take part in the decision of the Council. These breaches are so fundamental that they cannot be waived. As was observed by Sir Jocelyn Simon P. (as he then was) in *Mayes* v. *Mayes,*[6] at page 684:

"A rule of natural justice which goes to the very basis of judicature cannot be waived."

In my judgment the appellant did not get a fair and proper hearing in this case. The manner in which the Inquiry was conducted resulted in substantial prejudice to the appellant. It is a clear breach of natural justice for a member of the Medical Council to participate in a decision of the Council when he has not heard all the oral evidence and the submissions made. This breach is so fundamental that it cannot be waived. I am unable to see the force of the submission that the decision of the members of the Council was a unanimous one. The principles of natural justice having been violated, the decision of the Council cannot be allowed to stand. There was clearly no "due inquiry" in this case within the meaning of section 23(1) of the Medical Registration Act. The appeal is allowed and the Order made by the Medical Council on the 31st day of August 1978 is set aside.

Appeal allowed.

Solicitors: *Seah, Koh & Singa; Drew & Napier.*